

Calaveras Superior Court
Civil Law & Motion Calendar Tentative Rulings
Friday, August 21, 2020
Hon. David M. Sanders, Courtroom #2

9:00 AM	20CV44604	Demurrer Hearing to First Amended Complaint filed by BHUHSD	02/24/2020	09/04/2020	Motion Hearing;
				10/14/2020	Case Management Conference
Ptff/Pet:	Ratkovich, Nathaniel		Atty:	Dreyer Babich Buccola Wood Campora LLP	
Def/Res:	Bouncin Bins Rentals LLC; Bret Harte Grad Night Committee		Atty:		

Tentative Ruling: On January 3, 2020, plaintiff filed a complaint. On May 14, 2020, defendant Bret Harte Union High School District ("District") demurred. On July 13, 2020, plaintiff filed a first amended complaint. On July 27, 2020, defendant District demurred.

Defendant District's request for judicial notice is granted as to Exhibit A pursuant to Evidence Code sections 452 and 453.

Defendant District's request for judicial notice is granted as to Exhibit B and Exhibit C pursuant to Evidence Code sections 452 and 453 and Gong v City of Rosemead (2014) 226 Cal.App.4th 363, 376.

Code of Civil Procedure section 430.41 states that a "party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross complaint, or answer."

Defendant District's demur to the second cause of action to the original complaint was sustained with leave to amend for plaintiff's failure to plead with sufficient particularity; the amended complaint satisfied this shortcoming. Defendant District now demurs to the first amended complaint alleging plaintiff failed to comply with the Tort Claims Act. The Court finds defendant District was on notice as to the inclusion of a negligent product cause of action. If defendant District felt from the tort claims form plaintiff's failure to comply with the Tort Claims Act was demurable, it needed to have been raised in said defendant's first demurrer pursuant to CCP 430.41. Therefore, based on the foregoing, defendant District's demurrer to the First Amended Complaint is **OVERRULED**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant is to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM	11CV37943	Plaintiff's Motion to Set Aside Order Dismissing Action	09/28/2011
		Disqualification Filed	
Ptff/Pet:	Ark-Majiyagbe, Gabriel O.		Atty: Pro Se
Def/Res:	Carlin, Jeremy L.		Atty: Foley, Kenneth M.

Tentative Ruling: The complaint in this matter was filed September 28, 2011. The matter was tolled from approximately October 15, 2015 through December 27, 2017. On September 3, 2019, defendant filed a motion to dismiss the action. The motion was granted, and the judgment was entered on October 31, 2019.

Plaintiff filed this motion on July 22, 2020 relying on Code of civil Procedure section 473(b) which provides relief for a party from a judgment, dismissal, order or other proceeding within a reasonable time, in no case exceeding six months. In this matter, plaintiff's motion was filed beyond the six-month statute of limitations. Therefore, plaintiff's motion is **DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal order pursuant to Rule of Court 3.1312 is required.

9:00 AM	19CV44062	Motion-Summary Judgment / Summary Adjudication	05/08/2019	09/23/2020	Case Management Conference
Ptff/Pet:	Larson, Lorraine		Atty:	Davtyan Law Firm Inc.	
Def/Res:	Dignity Health; Mark Twain Medical Center		Atty:	Sheppard Mullin Richter & Hampton LLP	

Tentative Ruling: On May 8, 2019, plaintiff filed the complaint. On September 5, 2019, defendants answered. On June 2, 2020, defendants filed this motion for summary judgment or, in the alternative, summary adjudication. No trial date has been set.

Evidence Code section 201 defines relevant evidence as evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. Defendants object to specific sentences in declarations submitted by plaintiff based on relevancy. Defendants' objections to plaintiff's offered evidence numbers 4, 5, 7, 8, and 9 are overruled, as the statements are relevant.

Objection number 3 is sustained as the statement is irrelevant.

Defendants object to plaintiff's offered evidence numbers 1, 2, 4, 5, and 6, for asserting facts contrary to prior testimony and contend the statements do not constitute substantial evidence of a triable issue of fact. These objections are overruled. Although the statements, in and of themselves, do not constitute substantial evidence of a triable issue of fact, they are contributory evidence and therefore not excluded under Domenico.

Plaintiff objects to defendants' McQueen Declaration (Exhibit 3 to Larson Deposition Transcript Ex. A) in its entirety, on the grounds of foundation/authentication and relevancy. The Court overrules both objections as it finds the evidence to be relevant and it is authenticated by the court reporter.

Pursuant to CCP section 437c (7)(c) , "the motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. "

Also applicable is CCP section 437c(p)(2) which states in pertinent part: "[a] defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto."

The Court finds there are triable issues of fact in determining whether plaintiff was shorted wages due to rounding of employee timeclock entries to the nearest quarter hour. Although the Court notes the extensive analysis of defendants' expert Scott L. Sternberg, there are triable issues of fact as to the calculations used to determine if plaintiff was shorted wages; additionally, even if the expert's calculations are accepted by the trier of fact, there remains an issue as to whether the asserted de minimus reductions are or are not actionable. The ultimate issue is to be determined by the trier of fact.

The Court finds there are triable issues of fact in determining whether plaintiff was actually provided meal and rest breaks as required by law and as contained in defendants' written policies and if defendants knew or reasonably should have known that plaintiff was working through her breaks. Although there are written office policies and plaintiff's testimony that she understood and knew the meal period policies, there are triable issues that are to be determined by the trier of fact as to what actually occurred, plaintiff's role and responsibility in any deviations from policies, and defendants' actual or constructive knowledge of any deviations.

Finally, defendants claim the Settlement Agreement signed by plaintiff (although undated and unsigned by all parties) waived all causes of action against them. Defendants rely on the wording in the agreement that state ". . . all parties, . . . relinquish all rights, claims, and actions that they now have against each other . . ." However, the agreement explicitly is limited to claims concerning plaintiff's discharge and related grievance, as the discharge was based on plaintiff accessing her daughter's medical records, the Court does not agree that plaintiff waived all her claims in toto. Plaintiff's current claims as to time, wages and breaks, is separate and apart from any issues related to her discharge.

As the Court finds there are triable issues of fact, the remaining issues are not derivative of the above stated causes of action and will be addressed at trial.

The Court finds plaintiff has proven there are triable issues to all causes of action and DENIES defendants' motion for summary judgment, or in the alternative, summary adjudication to the remaining causes of action.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal order pursuant to Rule of Court 3.1312.